

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:POSTF-135999-02

EYWu

date: AUG 21 2002

to: Sid Holstein, Revenue Agent, LMSB 1757

from: June Y. Bass, Associate Area Counsel (LMSB)
Joyce M. Marr, Senior Attorney (LMSB)
Erica Y. Wu, Attorney (LMSB)

subject: Taxpayer: [REDACTED] (EIN [REDACTED]);
[REDACTED] (EIN [REDACTED])
Tax Years: [REDACTED]; [REDACTED]
Issue: Form 2848

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This memorandum modifies our prior memorandum dated July 29, 2002. This memorandum does not change the conclusion in that prior memorandum, but merely modifies the analyses therein.

In the July 29, 2002, memorandum, we concluded that [REDACTED] should sign the Forms 2848 in question because it is the designated agent under Temp. Treas. Reg. § 1.1502-77T(a)(4)(ii) for, and the successor-in-interest by merger to the old common parents of, the [REDACTED] and the [REDACTED] consolidated groups. However, Temp. Treas. Reg. § 1.1502-77T¹ only applies to statutory notices and waivers of the statute of limitations. Temp. Treas. Reg. § 1.1502-77T(b). Thus, [REDACTED] is the proper party to sign the Forms 2848 solely because of its status as the successor-in-interest by merger to [REDACTED] and [REDACTED].²

¹ Temp. Treas. Reg. § 1.1502-77T has been re-designated as Treas. Reg. § 1.1502-77A(e). See 67 FR 43538.

² While it is unclear what state law governs the merger between [REDACTED] and New [REDACTED] and the merger between [REDACTED] and New [REDACTED], the Office of Chief Counsel has found that every state's merger statute holds the surviving corporation primarily liable for the debts of

Please contact Erica Wu at (949)360-2678 if you have any questions.

the merged corporation. Thus, having survived the aforementioned mergers, New [REDACTED] (now known as [REDACTED]) has become the party primarily liable for the taxes due on the consolidated returns filed by [REDACTED] for the short year ending [REDACTED], and by [REDACTED] for the short year ending [REDACTED].

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[REDACTED] (EIN [REDACTED])
Tax Years: [REDACTED] [REDACTED]
Issue: Form 2848

DISCLOSURE STATEMENT

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This memorandum responds to your oral request for our opinion as to the validity of certain Forms 2848. This memorandum should not be cited as precedent.

ISSUE

Whether [REDACTED]'s chief financial officer may sign the Forms 2848 for the [REDACTED]
[REDACTED] consolidated group's short year ending [REDACTED] and for
the [REDACTED] consolidated group's short year ending [REDACTED]
[REDACTED]

CONCLUSION

No. The Forms 2848 should be signed by a duly authorized officer of [REDACTED]
[REDACTED] the alternative agent for the two groups at issue.
[REDACTED]'s chief financial officer is not an officer of [REDACTED]
and therefore does not have the authority to sign the forms.

FACTS¹

[REDACTED]

[REDACTED] (EIN [REDACTED]) and its subsidiary [REDACTED] (EIN [REDACTED]) filed Federal income tax returns on a consolidated basis. In [REDACTED], [REDACTED] merged into a corporation named [REDACTED], with [REDACTED] being the surviving corporation. [REDACTED] was a wholly owned subsidiary of [REDACTED] (EIN [REDACTED]), currently known as [REDACTED].²

As a result of the merger, [REDACTED] filed a consolidated return for the short year ending [REDACTED].

[REDACTED] changed its name to [REDACTED] immediately following the merger. New [REDACTED] also began using [REDACTED]'s EIN ([REDACTED]), even though [REDACTED] no longer existed. To our knowledge, New [REDACTED] never applied for its own EIN.

After the merger, New [REDACTED] and [REDACTED] became members of the [REDACTED] consolidated group. On [REDACTED], [REDACTED] merged into New [REDACTED] with the latter as the surviving corporation.

[REDACTED]

[REDACTED] (EIN [REDACTED]) and its subsidiary [REDACTED] (EIN [REDACTED]) filed Federal income tax returns on a consolidated basis. Both [REDACTED] and [REDACTED] were California corporations.

¹ Our understanding of the facts of this case is limited to the facts presented by you. We have not undertaken any independent investigation of the facts of this case. If the actual facts are different from the facts known to us, our legal analysis and our conclusions and recommendations might be different. Accordingly, if you learn that the facts known to us are incorrect or incomplete in any material respect, you should not rely on the opinions set forth in this memorandum, and should contact our office immediately.

² [REDACTED] has changed its names several times over the years, as follows:

<u>Time Period</u>	<u>Name</u>
[REDACTED] - [REDACTED]	[REDACTED]
[REDACTED] - [REDACTED]	[REDACTED]
[REDACTED] - [REDACTED]	[REDACTED]
[REDACTED] - [REDACTED]	[REDACTED]

In [REDACTED] merged with [REDACTED] another subsidiary of [REDACTED] with [REDACTED] being the surviving corporation. After the merger, [REDACTED] and [REDACTED] became members of the [REDACTED] consolidated group. Consequently, [REDACTED] filed a consolidated return for the short year ending [REDACTED].

On [REDACTED] [REDACTED] merged out of existence in a merger with New [REDACTED]. As for [REDACTED] the California Secretary of State's official website shows that it has been dissolved; the date of the dissolution, however, is unknown.

New [REDACTED]

New [REDACTED] has undergone multiple name changes since its merger with [REDACTED] and [REDACTED]. On [REDACTED] it changed the name to [REDACTED]. On [REDACTED] [REDACTED] changed its name to [REDACTED]. On [REDACTED] [REDACTED] changed its name to [REDACTED] (" [REDACTED]"), after being sold by [REDACTED] (formerly [REDACTED]) to [REDACTED] on [REDACTED]³ [REDACTED] still exists.

Forms 872

You are auditing the consolidated returns filed by [REDACTED] for the short year ending [REDACTED], and by [REDACTED] for the short year ending [REDACTED] (the "Returns"). By a memorandum dated April 5, 2002, and a supplemental memorandum dated April 18, 2002, LMSB attorney Robert Cudlip advised you that [REDACTED] is the proper party to execute the Forms 872 for the taxes due on Returns because it is the successor in interest to the old common parents of, and the alternative agent under Temp. Treas. Reg. § 1.1502-77T(a)(4)(ii) for, the [REDACTED] and the [REDACTED] consolidated groups (the "Groups").

Forms 2848

You have received a Form 2848 for each of the Returns. Both forms are signed by [REDACTED]'s chief financial officer, who is not an officer of [REDACTED]. You ask whether these forms are valid.

DISCUSSION

Treas. Reg. § 601.503 outlines the requirements of a valid power of attorney such as a Form 2848. One of the requirements is the taxpayer's signature. Treas. Reg. § 601.503(c). When a Form 2848 involves a corporate taxpayer, the form must be signed by an officer having

³ [REDACTED] is a publicly held corporation unrelated to [REDACTED] (formerly [REDACTED]).

authority to legally bind the taxpayer, who must certify that he/she has such authority. Treas. Reg. § 601.503(c)(3).

The threshold issue in this case is whether an officer of [REDACTED] may sign the Forms 2848. As the April 5, 2002, memorandum points out, [REDACTED] has the authority to act for the Groups on all tax matters because it is the alternative agent under Temp. Treas. Reg. § 1.1502-77T(a)(4)(ii) and the successor in interest to the old common parents of the Groups. For the same reasons, [REDACTED] is the proper party to execute the Forms 2848. Therefore, the Forms 2848 should be sign by a duly authorized officer of [REDACTED]. [REDACTED]'s chief financial officer is not an officer of [REDACTED]; she does not have the authority to bind [REDACTED]. The Forms 2848 are therefore invalid.

This advice will be forwarded to the National Office for post-review. If you have any questions, please contact Erica Wu at (949)360-2678.